

REMARKS

The application has been reviewed in light of the Office Action mailed November 18, 2004. At the time of the Office Action, Claims 1 – 70 were pending in this application. Claims 1 – 70 were rejected.

Rejection under 35 U.S.C. § 101

Claims 1-34 and 47-70 were rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter.

In response, independent claims 1, 15, 47, 59 and 70, upon which the remaining claims depend, have been amended to direct the claims to statutory subject matter consistent with the holdings by the Court of Appeals for the Federal Circuit in *State Street Bank & Trust Co. v. Signature Financial Group, Inc.*, 149 F.3d 1368, 47 USPQ2d 1596 (Fed. Cir. 1998), *cert. denied*, 119 S.Ct. 851 (1999) and *AT&T Corp. v. Excel Communications, Inc.*, 172 F.3d 1352, 50 USPQ2d 1447 (Fed. Cir. 1999). Reconsideration and withdrawal of the rejection are respectfully requested.

Rejection under 35 U.S.C. § 112, Second Paragraph

Claims 65-67 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 65 has been amended to depend upon claim 64 as helpfully suggested by the examiner. Claim 66 has been amended to depend upon claim 64, thereby curing the antecedent basis problem for both claim 66 and 67. Reconsideration and withdrawal of the rejection are respectfully requested.

Rejections under 35 U.S.C. § 103(a)

Claims 1-5, 7-26, and 28-70 are rejected under 35 U.S.C. § 103(a) as being obvious in view of Lilly (U.S. Patent No. 5,787,000) in view of Layden (“A Rapidly Changing Landscape”).

The rejection is respectfully traversed. Applicants agree with the examiner that Lilly does not expressly teach that the incorporation of the step of providing the work schedule to the manufacturing line, substantially immediately after generating the work schedule, for initiating work to mass produce each of the at least one item according to the work schedule. However, applicants take exception to the assertion Layden simply stating that “orders are launched as soon as they arrive” does not anticipate any element of the present invention. Layden does not indicate what “launched” means. Layden could have referred to many things, but there is no indication that Layden was referring to a generating a work schedule and a delivery schedule and then providing the work schedule to the manufacturing line as required by the limitations of independent claim 1. It is respectfully submitted that Layden does not provide sufficient specificity of what “launched” means in order to combine it with Lilly and encompass the limitations of the independent claims of the instant invention.

For the reasons stated above, reconsideration and withdrawal of the rejection of independent claims 1, 15, 35, 46, 47, 58, 59, and 70 and by extension their respective dependent claims, are respectfully requested.

Rejections under 35 U.S.C. § 103(a)

Claims 6 and 27 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Lilly in view of Layden and further in view of Jenkins et al. (U.S. Patent Application Serial

Number 09/984,349 (Publication 2002/0188499).

Applicants respectfully traverse the rejection. Applicants note that the filing date of Jenkins occurred *after* the filing date of the present application. While reserving any argument that the Applicants may make with respect to merits of this rejection, Applicants respectfully submit that Jenkins cannot constitute a prior art reference for a rejection under 35 U.S.C. 103(a), and thus the examiner's rejection must fall for that reason. Alternatively, while not conceding the previous argument, even if Jenkins is properly considered prior art, the citation of the publication of the *converted* application to the present claims is improper because there is no guarantee that the elements cited in the *published* Jenkins application were present in the *provisional* application. It is thus respectfully submitted that Jenkins does not constitute prior art and, in any event, the citation to the published application is improper. Reconsideration and withdrawal of the rejection are respectfully requested.

All amendments and remarks are made in a good faith effort to advance the prosecution on the merits. Applicants reserve the right to subsequently take up prosecution on the claims as originally filed in this or appropriate continuation, continuation-in-part and/or divisional applications.

Applicants respectfully request that the amendments submitted herein be entered, and further request reconsideration in light of the amendments and remarks contained herein.

Applicants respectfully submit that no amendments have been made to the pending claims for the purpose of overcoming any prior art rejections that would restrict the literal scope of the claims or equivalents thereof.

Applicants respectfully request withdrawal of all rejections, and that there be an early notice of allowance.

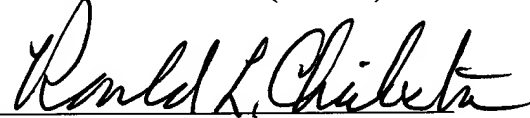
SUMMARY

In light of the above amendments and remarks Applicants respectfully submit that the application is now in condition for allowance and early notice of the same is earnestly solicited. Should the Examiner have any questions, comments or suggestions in furtherance of the prosecution of this application, the Examiner is invited to contact the attorney of record by telephone or facsimile.

Applicants believe that there are no fees due in association with the filing of this Response. However, should the Commissioner deem that any fees are due, including any fees for extensions of time, Applicants respectfully request that the Commissioner accept this as a Petition Therefor, and direct that any and all fees due are charged to Baker Botts L.L.P. **Deposit Account No. 02-0383, (formerly Baker & Botts, L.L.P.) Order Number 016295.1099**

Respectfully submitted,

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